Cambridge Assessment International Education

# Cambridge International AS & A Level

**LAW** **9084/43**

Paper 4 **May/June 2022**

MARK SCHEME

Maximum Mark: 75

**Published**

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began, which would have considered the acceptability of alternative answers.

Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

Cambridge International will not enter into discussions about these mark schemes.

Cambridge International is publishing the mark schemes for the May/June 2022 series for most Cambridge IGCSE, Cambridge International A and AS Level and Cambridge Pre-U components, and some Cambridge O Level components.



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**[Turn over**

## Generic Marking Principles

These general marking principles must be applied by all examiners when marking candidate answers. They should be applied alongside the specific content of the mark scheme or generic level descriptors for a question. Each question paper and mark scheme will also comply with these marking principles.

GENERIC MARKING PRINCIPLE 1:

Marks must be awarded in line with:

- the specific content of the mark scheme or the generic level descriptors for the question
- the specific skills defined in the mark scheme or in the generic level descriptors for the question
- the standard of response required by a candidate as exemplified by the standardisation scripts.

GENERIC MARKING PRINCIPLE 2:

Marks awarded are always **whole marks** (not half marks, or other fractions).

GENERIC MARKING PRINCIPLE 3:

Marks must be awarded **positively**:

- marks are awarded for correct/valid answers, as defined in the mark scheme. However, credit is given for valid answers which go beyond the scope of the syllabus and mark scheme, referring to your Team Leader as appropriate
- marks are awarded when candidates clearly demonstrate what they know and can do
- marks are not deducted for errors
- marks are not deducted for omissions
- answers should only be judged on the quality of spelling, punctuation and grammar when these features are specifically assessed by the question as indicated by the mark scheme. The meaning, however, should be unambiguous.

GENERIC MARKING PRINCIPLE 4:

Rules must be applied consistently, e.g. in situations where candidates have not followed instructions or in the application of generic level descriptors.

GENERIC MARKING PRINCIPLE 5:

Marks should be awarded using the full range of marks defined in the mark scheme for the question (however; the use of the full mark range may be limited according to the quality of the candidate responses seen).

GENERIC MARKING PRINCIPLE 6:

Marks awarded are based solely on the requirements as defined in the mark scheme. Marks should not be awarded with grade thresholds or grade descriptors in mind.

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## Social Science-Specific Marking Principles (for point-based marking)

**1 Components using point-based marking:**

- Point marking is often used to reward knowledge, understanding and application of skills. We give credit where the candidate's answer shows relevant knowledge, understanding and application of skills in answering the question. We do not give credit where the answer shows confusion.

From this it follows that we:

**a** DO credit answers which are worded differently from the mark scheme if they clearly convey the same meaning (unless the mark scheme requires a specific term)

**b** DO credit alternative answers/examples which are not written in the mark scheme if they are correct

**c** DO credit answers where candidates give more than one correct answer in one prompt/numbered/scaffolded space where extended writing is required rather than list-type answers. For example, questions that require *n* reasons (e.g. State two reasons …).

**d** DO NOT credit answers simply for using a 'key term' unless that is all that is required. (Check for evidence it is understood and not used wrongly.)

**e** DO NOT credit answers which are obviously self-contradicting or trying to cover all possibilities

**f** DO NOT give further credit for what is effectively repetition of a correct point already credited unless the language itself is being tested. This applies equally to 'mirror statements' (i.e. polluted/not polluted).

**g** DO NOT require spellings to be correct, unless this is part of the test. However spellings of syllabus terms must allow for clear and unambiguous separation from other syllabus terms with which they may be confused (e.g. Corrasion/Corrosion)

**2 Presentation of mark scheme:**

- Slashes (/) or the word 'or' separate alternative ways of making the same point.
- Semi colons (;) bullet points (•) or figures in brackets (1) separate different points.
- Content in the answer column in brackets is for examiner information/context to clarify the marking but is not required to earn the mark (except Accounting syllabuses where they indicate negative numbers).

**3 Annotation:**

- For point marking, ticks can be used to indicate correct answers and crosses can be used to indicate wrong answers. There is no direct relationship between ticks and marks. Ticks have no defined meaning for levels of response marking.
- For levels of response marking, the level awarded should be annotated on the script.
- Other annotations will be used by examiners as agreed during standardisation, and the meaning will be understood by all examiners who marked that paper.

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The mark bands and descriptors applicable to all questions on the paper are as follows.

**Band 1 [0 marks]**
The answer contains no relevant material.

**Band 2 [1–6 marks]**
The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
**OR**
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

**Band 3 [7–12 marks]**
The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial
**OR**
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules
**OR**
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

**Band 4 [13–19 marks]**
Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue
**OR**
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

**Band 5 [20–25 marks]**
The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

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| Question | Answer | Marks |
|---|---|---|
| 1 | **Not every interference with the enjoyment of land will be classed as a nuisance.**<br><br>**Describe the essential elements of private nuisance. Assess the validity of the statement above.**<br><br>This question concerns the rules relating the tort of private nuisance<br><br>Candidates should describe the main elements of the tort, using relevant case law to illustrate the explanation of the legal rules.<br><br>Potential Content<br><br>• Definition of private nuisance<br>• Meaning of indirect interference<br>• Meaning of unreasonable interference<br>• Locality<br>• Duration<br>• Sensitivity<br>• Malice<br><br>Candidates should then consider and assess the validity of the statement – not every interference will amount to a nuisance<br><br>Potential Content<br><br>• Who can sue and who can be sued?<br>• Purely recreational uses of land<br>• Potential defences<br>• Damage<br><br>Candidates should identify examples of interference which might not be classified as a nuisance. Candidates should reach a coherent conclusion as to the validity of the statement<br><br>Assessment is required to achieve the higher mark bands. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 2 | **Describe the rules under which one person may be held vicariously liable for the tort of another. Assess the extent to which vicarious liability is justifiable.**<br><br>Candidates should describe the meaning and purpose of vicarious liability and then address the assessment element of the question.<br><br>Potential Content<br><br>• Definition of vicarious liability<br>• Identifying the employment status – the tests<br>• Meaning of 'course of employment'<br>• Meaning of 'frolic of his own'<br>• Was the act or omission a tort?<br><br>Relevant case law should be used to support the description of the rules<br><br>Candidates should then consider the imposition of vicarious liability can be justified. Candidates should consider whether the imposition of vicarious liability is too harsh and also consider the arguments used to justify this type of liability<br><br>Potential Content<br><br>• Employer has control over the activities of the worker<br>• Employer responsibility for hiring and firing of staff<br>• Employer is in a better position to compensate the injured party<br>• Vicarious liability as a form of deterrence<br><br>Candidates should examine the competing arguments and reach a reasoned conclusion | **25** |

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| Question | Answer | Marks |
|---|---|---|
| 3 | **A purely social relationship should never give rise to liability for a negligent misstatement.**<br><br>**Describe the elements of liability for negligent misstatement. Assess the validity of the statement above.**<br><br>This question concerns the tort of negligence with a particular focus on the issue of liability for a negligent misstatement in the context of a statement made in a social setting.<br><br>Candidates should outline the main elements of the tort of negligence – duty of care, breach of duty and damage. However, a detailed account of all the elements is not required as the question is quite specifically asking about negligent misstatement and this should be the main focus of the candidates' response.<br><br>Candidates can be credited for an explanation of any of the following issues:<br><br>• Nature of pure economic loss<br>• The judgement in Hedley Byrne v Heller<br>• The elements of the special relationship<br><br>Relevant case law should be used to support the explanation.<br><br>Candidates should then assess the validity of the statement relating to liability in the context of a social relationship<br><br>• Social relationships - examples<br>• Special skill/expertise<br>• Reasonable reliance in context of social relationship<br><br>Candidates should pay particular attention to the issue of statements made in the context of a social relationship and consider the relevance case law. Candidates should reach a coherent conclusion as to whether liability for a negligent misstatement should ever arise in this context and if so clearly identify the factors which should be present. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 4 | **Advise the parties as to their rights and responsibilities in relation to negligence.**<br><br>This question concerns negligence, standard of care of a professional and causation<br><br>Potential Content<br><br>Candidates should explain the legal rules in relation to the following<br><br>• Duty of care requirements<br>• Breach of duty – standard of care in relation to a professional<br>• Factual causation – but for test<br>• Legal causation<br><br>Relevant case law should be used to support the explanation of each element<br><br>Candidates should then apply the relevant law to the facts of the scenario, with reference to the following:<br><br>• Is a duty of care present –who owes the duty and to whom?<br>• What is the standard of care – what are the relevant factors in determining whether there has been a breach<br>• What standard of care applies in the case of a professional such as a doctor<br>• Has damage resulted from the breach which is not too remote<br>• Are there any defences – volenti, contributory negligence?<br><br>Candidates must explain the law and in order achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 5 | **Advise the parties as to their rights, responsibilities and remedies in relation to occupiers' liability.**<br><br>The focus of this question is occupiers' liability<br><br>Candidates should first examine which Act applies – is Liam a visitor or is he a trespasser. The issue of permission should be examined and in particular the issue of whether Liam has implied permission to enter the property to deliver a menu to Marie's house.<br><br>Potential content<br><br>• Definitions – occupier, premises, visitor, trespasser<br>• Visitor on basis of implied permission OLA 1957<br>• Explanation of relevant duty – common duty of care<br>• Liability for work done by an independent contractor S2(4)<br>• Damages – personal injury and damage to property<br><br>Relevant case law should be used to support the explanation of the law.<br><br>Candidates should then address the key elements of the scenario and apply the relevant law to the facts, including:<br><br>• Which Act applies and why?<br>• Has the occupier fulfilled their duty under the 1957 Act?<br>• Was the damage caused by the act of an independent contractor?<br>• Has Marie discharged her duty in relation to the work of the independent contractor?<br>• Are there any defences available?<br>• What losses will be covered if liability is established?<br><br>Candidates may be credited for an approach based on the Occupiers' Liability Act 1984.<br><br>Candidates must explain the law and in order achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion. | **25** |

| Question | Answer | Marks |
|---|---|---|
| 6 | **Advise the parties as to their rights and responsibilities in relation to Rylands v Fletcher**<br><br>The focus of this question is Rylands v Fletcher<br><br>Potential Content<br><br>• Potential claimants should be identified<br>• Potential defendant should be identified<br>• Explanation of purpose of Rylands v Fletcher<br>• Bringing something on to land<br>• Non-natural use<br>• Mischief<br>• Escape<br>• Foreseeability of harm<br>• Defences<br>• Remedies<br><br>Relevant case law should be used to support the explanation<br><br>Candidates should then apply the relevant law to the facts of the scenario.<br><br>Potential Content<br><br>• Identify the claimant/defendant<br>• The accumulation of water – a non-natural use?<br>• Likelihood of mischief in event of escape?<br>• Has there been an escape?<br>• Foreseeability of harm?<br>• Relevant defences<br>• Recoverable damage<br><br>Candidates must explain the law and in order achieve the higher bands candidates must also apply the law in a logical fashion to the facts and reach a coherent conclusion. | **25** |

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